

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 2 OF 2006

Pramil @ Premanand Rao
s/o. Gajanan Rao,
r/o. House No. 202, Bhutwadi,
Pernem, Goa.

..... Appellant

versus

State of Goa,
as Rep.by Officer in Charge,
Anjuna Police Station.

..... Respondent

Mr. S. Saudagar, Advocate for the Appellant.

Mr. S. N. Sardesai, Public Prosecutor for the State.

**CORAM: A. P. LAVANDE,
N. A. BRITTO, JJ.**

DATE: 5TH JUNE, 2006.

JUDGMENT (Per N. A. BRITTO, J.)

This appeal is by the accused, aged 24 years, who was charged

and tried under Sections 302, 394 and 201 I.P.C. and who has been convicted and sentenced under Sections 302 and 394 I.P.C. for having robbed and murdered Smt. Aneya @ Baby Kerkar, aged 42 years, to life imprisonment and to rigorous imprisonment of ten years and to pay a fine of Rs. 5,000/- on each count in default to undergo further imprisonment of six months.

2. The case of the prosecution was based on circumstantial evidence. As per the prosecution, the accused and the deceased were known to one another and on 28.11.2002, the accused phoned the deceased twice, as stated by her daughter, and thereafter the deceased Aneya left the house after 10.00 a.m. and whilst going, took with her a telephone bill to be paid, and her daughter's slippers to be exchanged, and on her way to Pernem, she took a lift from Sudin Malik/P.W.13 at about 10.30 a.m. from Suke Kulan to Pernem, near Sandesh Printers, (and not near the watch shop, where according to her daughter Sweta Kerkar/P.W.1, the accused had promised to meet her) and that was the last seen of her. It appears that her husband Anant/P.W.4, searched for her on the same day by going about to several places as she had not come, and on 29.11.2002, gave a missing report at Pernem Police Station; it appears that the deceased Aneya as well

as the accused, resided within the jurisdiction of the Pernem Police Station but the said missing report has not been produced by the prosecution and what was produced at the eleventh hour was a format with inputs about the missing person (exhibit 81). On 30.11.2002, the Investigation Officer/PW22, who at the relevant time was in charge of the Anjuna Police Station, received information from his counterpart at Mapusa Police Station, stating that some mortal remains were seen at the hillock at Marna, Siolim, which area is presumably closer to the Mapusa Police Station, and pursuant thereto, P.W.22 Wilson D' Souza, visited the place and conducted the inquest/scene of offence panchanama. This he did after registering a case of U.D. and what he found there was a jaw bone and a skull, which was later opined to be that of an adult female in the age group of 40 to 45 years and also some hair regarding which no effort was made to find out whether it related to the same skull, assuming that such an exercise was possible, and besides the I.O. also found a white printed saree (exhibit 1), a black blouse (exhibit 2), black sandals (exhibit 3), a silver toe ring (exhibit 4), a ghagra (exhibit 5), white sandals (exhibit 6), shoulder bag (exhibit 7), which were later on 1-12-2002 were identified by her daughter, son and husband as belonging to the deceased and on the basis of the same, it was

presumed that the said mortal remains were those of the deceased Smt. Aneya.

3. After the deceased Aneya had not returned home on 28-11-2002, her husband PW4/Anant along with his brother-in-law Ramakant Tulaskar went in search of her and even went to the Pernem Police Station to find out whether his wife, the deceased Aneya, had met with an accident and on the next morning i.e. on 29-11-2002 PW4/Anant along with Panchayat Member Pradip along with a photograph lodged a missing report. On 1-12-2002 on being informed through P.I. Pernem Police Station the daughter(PW1), the husband(PW4) and the son(PW5) came to the Anjuna Police Station and the F.I.R. came to be lodged at about 9.00 hours by PW1/Sweta only after seeing the mortal remains and the clothes and other articles found at the scene. We have already stated that the missing report lodged by PW4/Anant at the Pernem Police Station has not been produced by the prosecution. The said report would have provided corroborative evidence not only as regards the circumstances in which the deceased Aneya had left the house but also the description of her clothes and her gold ornaments. Instead of producing the said missing report, what was produced by the Investigating Officer PW22/P.I. Wilson D'Souza was

the format with combined input of the missing person along with photograph and when PW22/P. I. Wilson D'Souza was questioned about the missing report he stated that the same(Exh.81) was sent to him later on after the registration of offence but could not give the exact date and that he also did not record the date of receipt of the same in his case diary. On further cross-examination he stated that when missing report is lodged the gist of information is recorded on the station diary but he had not verified the station diary of the Pernem Police Station nor he had asked the Police Inspector of Pernem Police Station to forward the extract of the station diary. It was clearly suggested to him that he had not produced the extract of the station diary because it gave the exact cause of disappearance and he did not produce it because it would go against the case of prosecution. We have no other option but to draw adverse inference for the non production of the missing report lodged by the husband of the deceased namely PW4/Anant Kerkar on 29-11-2002.

4. The learned Sessions Judge has come to the conclusion that the death of the deceased Aneya was homicidal and it has been submitted on behalf of the accused that despite of the cause of death having not been ascertained by the Police Surgeon PW16/Dr. Sapeco and despite

disbelieving the recovery of knife/MO.20 the learned Sessions Judge could not have come to the conclusion that the case was one of homicide. In our view, there was absolutely no acceptable legal evidence to conclude that the death of the deceased was homicidal. PW16/Dr. Sapeco had clearly opined that in the absence of flesh, vital organs, neck, chest, abdomen, upper and lower limbs no opinion as to the exact cause of death could be given inasmuch as no ante mortem fractures were seen on the parts which were available namely the skull and the jaw bone. If the Investigation Officer PW22/P.I.Wilson D'Souza ever believed that the accused had stabbed the deceased Aneya on her chest and abdomen then the blouse(Exh.2) and the gagra/saree(Exh.5 and Exh.1) would have corresponding cuts of the knife which could certainly have been ascertained from Central Forensic Science Laboratory and apparently this exercise was not done by the Investigating Officer. Therefore, it was difficult to come to the conclusion that the death of the deceased was homicidal in nature. The disappearance of most parts of the body of the deceased Aneya are sought to be explained by submitting that the dead body might have been eaten by animals but such a story militates against the manner in which the clothes of the deceased, referred to herein above, were found. It is quite probable that in case the body of the deceased was eaten by animals, as suggested, the clothes of the deceased

might have been found in shreds but that is not the case, and, again one does not know how a toe ring could be found without the toe being there.

5. Be that as it may, we shall now proceed to analyze the circumstantial evidence against the accused.

6. The first circumstance which has been considered by the learned Sessions Judge as proved is that the deceased had left the house to go to Pernem being called by the accused, on the basis what the deceased is stated to have told her daughter. Admittedly, nobody saw the accused and the deceased together on 28-11-2002. The learned Sessions Judge has accepted the evidence of PW1/Sweta, PW4/Anant and PW5/Hemant as convincing but we have our own reservations about the same. Their evidence does not appear to have been tested on the anvil of probabilities. It is quite possible that the accused was known to the deceased Aneya and her family members and the accused used to visit them as the brothers of the accused by names Lavu and Sanvlo were the classmates of her brother PW5/Hemant. However, the statement of PW1/Sweta that her mother, the deceased would hire the motorcycle of the accused to go to Mapusa, Pernem, etc. whenever she had work and her mother used to pay his hire

charges, is difficult to be accepted. The family of the deceased Aneya does not appear to have been very affluent so as to hire a motorcycle of the accused who was based at Pernem to come all the way to Nagzar and take her to Pernem, Mapusa, etc. on payment of hire charges, and again reach her back. Admittedly, PW1/Sweta was the only person at the house when her deceased mother left the house, and if the deceased Aneya had told PW1/Sweta that accused had telephoned her and called her to Pernem we do not see any reason why the deceased should not have told PW1/Sweta as to for what purpose the accused had called her, and if the deceased would avail of the motorcycle of the deceased on hire, as to why the deceased Aneya had to go by bus from Nagzar to Pernem on that day. If PW1/Sweta stated that her mother left the house because the accused called her, the deceased did not tell anything of this type to PW13/Sudin Naik who gave her a lift, half way. There is also no explanation as to why the deceased, if she had taken a bus to come from Nagzar to Mapusa had to get down at Sukekulan and take a lift from PW13/Sudin Naik and asked to be dropped not near the watch shop at Pernem, as deposed by PW1/Sweta, but at Sandesh Printers at Pernem, as deposed to by PW13/Sudin Naik. In case the missing report was produced by the Investigating Agency it might have given some corroboration to the story of PW1/Sweta as to what her

mother had told her namely that the accused had phoned and called her to Pernem, and in fact it was expected of PW1/Sweta, when her mother told her about it, if at all, to have asked her mother as to why the accused had called her all the way from Nagzar to Pernem and for what purpose and as to why he was not coming to Nagzar and taking her to Pernem. PW4/Anant, as stated by him, went first to the Police Station along with his brother-in-law Tulaskar to find out whether there was any accident involving his wife. That does not at all appear to be a normal conduct of a person, if he knew on being told by PW1/Sweta that his wife had gone along with the accused on being called by him. The first and the most normal thing which any person in the place of PW4/Anant would have done was to first straight come to Pernem at the motorcycle stand in search of the accused to find out as to where he was or at least go to his house and find out his whereabouts and consequently of his wife. Going to the Police Station first and later to their relations and friends does not appear to be a normal conduct of a person, if he knew that his wife had gone, on being called by a particular person. PW1/Sweta stated that her mother had a contact telephone number of the accused and she telephoned the said contact telephone number of the neighbour of the accused only to be told that the accused had telephoned the said neighbour stating that the accused

had informed him to inform his house that he was not coming home. On the same aspect, PW4/Anant has stated that after lodging the missing report it is Pradip who telephoned the neighbour of the accused whether the accused Pramil was at home only to be told that the accused was not at home. It is obvious that there is material variance in the versions given by PW1/Sweta and PW4/Anant as to who exactly phoned the accused at his neighbour's house. PW22/P.I. Wilson D'Souza when questioned on this aspect, stated that he had verified the said phone/contact number of the accused but on further cross-examination he stated that he did not recollect the name of the said neighbour nor did he record his said statement. Admittedly, PW1/Sweta had herself not taken the phone either at 8.00 a.m. or 10.00 a.m., on both the occasions the telephone having been attended to by her mother and it is also quite possible that the mother was called by someone else and the mother gave the name of the accused or this part of the story has been introduced by PW1/Sweta subsequently since as we have already noted in case PW1/Sweta knew that her mother, the deceased had gone to Pernem on being called by the accused that PW4/Anant would not have gone in search of his wife, the deceased either at the Police Station to find out whether she had met with an accident or at the house of their friends or relatives. This story does not appear to have been thought of prior to

29-11-2002 i.e. prior to search and lodging of missing report. The case of the prosecution as narrated by PW1/Sweta that her mother told her that accused had called her is a circumstance which in our view is not proved beyond doubt and, therefore, could not be held as proved against the accused.

7. The next circumstance which has been considered by the learned Sessions Judge is that the shirt of the accused was found with human blood on both the folded sleeves when the accused was arrested on 1-12-2002 at 12 noon. In this regard PW22/P.I. Wilson D'Souza stated that he arrested the accused on 1-12-2002 and attached the clothes worn by the accused namely a shirt, a jean pant and shoes and it has been stated by PW7/Rajendra who was a panch witness to the attachment, that the accused was wearing a black pant(Exh.A/MO.12), a long sleeves light blue shirt(Exh.D/MO13) and leather shoes(Exh.D/MO15) and the accused was asked to remove the same. He stated that the said articles were packed separately and the packets were sealed and the shirt was dirty and where the sleeves were folded there was blood on the said folds. He also stated that there was a receipt of Mac Auto Service Station dated 29-11-2002 indicating that the vehicle was washed. However, when

he was cross-examined he stated that the accused was brought from inside the Police Station and that he did not know as to from where the accused was brought to the Police Station nor was he told about the same. PW22/P.I.Wilson D'Souza in his cross-examination stated that he had seen the accused for the first time at the time of his arrest on 1-12-2002 when he was brought by his staff from Pernem Police Station but he did not know the names or the buckle numbers of the staff who had brought the accused to the Police Station nor had he mentioned their names in the case diary. He stated that he had contacted the P.I. of Pernem Police Station and had requested him to send the accused to Anjuna Police Station and thereafter the accused was sent to Anjuna Police Station at about 12 p.m. but he did not recollect whether there was any entry on the station diary to the effect that the staff from the Anjuna Police Station had gone to Pernem Police Station. It was suggested to him that the accused was brought to Anjuna Police Station on 30-11-2002 during night time, a suggestion which he denied. According to the accused, when the accused came home on 29-11-2002 in the night, his father Gajanan told him that he was called at Pernem Police Station and upon questioning his father he had come to know that the Police had visited his residence but had not given any reason as to why the accused was called at Pernem Police Station and since it was

late he decided to come to Pernem Police Station on the next date and accordingly on 30-11-2002 he went to Pernem Police Station to find out why he was called and when he saw that many persons from Nagzar village were present along with the family members and relatives of the deceased and the said persons were arguing with the Police and demanding the arrest of the accused and, therefore, the accused was detained at Pernem Police Station on the whole day and in the night was brought to Mapusa and given in custody of Anjuna Police Station and has been falsely shown as arrested by Anjuna Police Station on 1-12-2002. If at all the accused had blood stains on the folds of the sleeves of his shirt, the same ought to have been seen by PW14/Tanko Parloskar when both of them went to Vasco da Gama on the motorcycle of the accused and later by PW15/Manoj Thakur when he met the accused and the said Tanko at the house of Kiran Thakur. It has been admitted by PW1/Sweta that the accused was present at Pernem Police Station on 30-11-2002 when she had gone there between 9 a.m. to 4.30 p.m. where she and her family members and some villagers were also present and it is difficult to believe that none of them saw the blood stains on the folds of the sleeves of the accused at that time. It is also very difficult to believe that none of the Officers of Pernem Police Station also saw the said blood stains when the family members and other neighbours were

demanding the arrest of the accused. We may safely conclude that the accused was first at Pernem Police Station from 9 a.m. onwards of 30-11-2002. He was arrested by Anjuna Police Station at around noon of 1-12-2002. The Arrest Panchanama was certainly not made when the accused was arrested but when the accused was already in custody of the Police and in such a situation we would be constrained to observe that if at all blood stains were found while the accused was in custody of the Police it was for the Investigating Officer to explain the same and the accused owed no duty to give an explanation. That apart, if it is the case of the prosecution that the accused got his motorcycle washed at Margao, it is difficult to accept that the accused would have gone with the same shirt which he might have used on 28-11-2002 when the message was kept for him to come to Pernem Police Station. The accused being a motorcycle pilot might not have been in the habit of changing his shirt daily, but certainly, the accused when called by the Police would not have gone with the same shirt. In this context the observations of the Apex Court in the case of **Yamnappa Shirgumpi v. State of Karnataka**(1981 SCC(Cri.) 271) referred to by the learned Sessions Judge were very much relevant. The Supreme Court observed that when the accused had appeared before the Police as an innocent person, he would not have done so after wearing blood stained

clothes so as to entangle himself in a murder case, specially when he had sufficient time to destroy those clothes or the stains of blood on them. The motorcycle washing receipt(Exh.56) in support of which PW18/Sabia Sheikh was examined and which was found with the accused along with a wrist watch, motorcycle driving licence and cash was put in a transparent polythene bag and was marked as Exh.D. On this aspect, PW22/P.I.Wilson D'Souza was cross-examined and he stated that he had taken the said article Exh.D from Head Constable Shetgaonkar whenever required and the said receipt was shown to PW18/Sabia Sheikh. He stated that the said receipt (Exh.56) and other items were packed in a transparent polythene bag and the said polythene bag was put in envelope which was sealed in front of panchas and at the time of showing the said receipt to PW18/Sabia Sheikh he had opened the said sealed envelope but had not opened the said polythene bag which was also sealed and he had prepared a memorandum at the time of opening of the said envelope which was recorded in the muddemal register but he did not recollect of having made any entry to that effect in the station diary and that he had resealed the said envelope after showing the receipt to the witness and a memorandum was also prepared and the said envelope was opened and resealed at the Police Station. Here it may be noted that PW7/Rajendra Shetye had stated only as regards articles

being put in plastic bag and being sealed. He did not refer to the plastic bag being put in an envelope and being sealed. We are unable to understand how a plastic bag after heat sealing could be sealed with wax seals which would not stick to plastic. It is only PW22/P.I. Wilson D'Souza who has stated that the plastic bags were put in envelopes which were sealed. If that is so, that is how sealing had to be done. However, the cross-examination of PW22/P.I. Wilson D'Souza shows that he had interfered with the seals of the envelope at his whim and fancy, and not in presence of any pancha witnesses and in such a situation the possibility that Exh.B in which the shirt was packed, was also tampered with could not be ruled out. This circumstance is not proved beyond reasonable doubt against the accused.

8. The third circumstance which has been considered by the learned Sessions Judge is the attachment of Rs.5,800/- from the house of the accused which in the opinion of the learned Sessions Judge represents the money paid on the sale of the bangles/patlis. If the Investigating Officer is to be believed, it is PW2/Suresh Vernekar who told him that he had purchased the said gold bangles for Rs.8000/- on 2-12-2002 and if that is so the immediate question which the Investigating Officer ought to have addressed, was to ask the accused as to where was the amount received by

him upon the sale of the said bangles/patlis but nothing of that sort appears to have happened on 2-12-2002 and the seizure is made on 3-12-2002 and all that has been stated by the Investigating Officer is that he recovered from the house of the accused under panchanama Exh.36 a sum of Rs.5,800/-. Admittedly, it is not the case of the prosecution that the said amount was attached pursuant to any information given by the accused. PW11/Mahadev Naik who was examined by the prosecution in support of the said panchanama stated that he was called to the house of the accused at Butawadi, Pernem on 3-12-2002 at about 5-15 p.m. and at that time the father of the accused as well as the accused were present and the father of the accused named Gajanan Rao stated that on 30-11-2002 his son gave him a parcel and he handed over the same to the I.O. and on opening the same it was found to contain Rs.5,800/- in the denominations of 3 x Rs.500, 36 x Rs.100 and 14 x Rs.50. It was pointed out on behalf of the defence before the learned Sessions Judge as well as now before this Court that PW2/Suresh had paid to the accused a sum of Rs.8000/- in the denomination of 10 x Rs.500 and 30 x Rs.100 and, therefore, the notes recovered from the house of the accused did not tally with the denomination of the notes paid by PW2/Suresh and, therefore, there was no room for inference that the money recovered from the house of the accused

pertained to the money paid by PW2/Suresh. The learned Sessions Judge held that the accused had gone to Vasco on the same day and the possibility of the accused spending part of the amount could not be ruled out and that the accused had not given any explanation as regards the source of this amount and that the amount recovered from the house of the accused formed part of the money paid to the accused PW2/Suresh. We are unable to accept the reasoning of the learned Sessions Judge to come to the conclusion that the sum of Rs.5,800/- represented the sale proceeds of gold bangles/patlis sold to PW2/Suresh, for reasons more than one; firstly, the prosecution did not examine the father of the accused in support of the statement that the said parcel containing Rs.5,800/- was handed over to him by the accused and in the absence of such examination what was stated by PW11/Mahadev Naik that the father of accused had stated that the accused had given the said parcel had to be rejected, as hearsay. Moreover, it is difficult to accept that the accused went on spending 7 notes of Rs.500/- out of 10 given to him by PW2/Suresh when otherwise the accused had other cash to spend in the denomination of Rs.100/-. As will be seen little later in greater detail, there was no occasion for the accused to have spent substantial amount in the company he was and all that it could be said was that the accused had spent only a sum of Rs.40/- towards the

washing or servicing of his motor cycle. It was not the case of PW14/Tanko, PW15/Manoj and PW20/Kiran Thakur in whose company the accused was on 28th and 29th November, 2002 that the accused had gone on spending spree and in such a situation, in our view, there was no question of any inference being drawn that the money handed over by the father of the accused was the part of the sale proceeds obtained from PW2/Suresh from sale of bangles/patlis.

9. Next, we will consider the circumstance of the recovery of the knife which otherwise has been disbelieved, and in our view rightly, by the learned Sessions Judge. One of the reasons given by the learned Sessions Judge to disbelieve the said recovery is that the knife which had remained in water for 14 days and which was wiped by the Police Inspector could not have had blood stains. The statement made by the panch witness PW12/Sanjay Naik that he was told four days prior to 11-2-2002 to come to Anjuna Police Station in connection with the attachment of the knife is a statement which does cast a doubt on the said recovery and as far as that aspect is concerned, we are in agreement with the conclusion of the learned Sessions Judge. Moreover, it may be noted that a Division Bench of this Court in the case of **Ahmad Chakri** (1994 Cr.L.J. 274), where there was a

delay of 4 or 5 days as regards the discovery of the weapon, observed that in the criminal trial the amount of delay would have fatal consequences and the totality of the evidentiary value of the discovery gets considerably weakened because of the delay factor. In this case the recovery is made after 10 days. As already stated the evidence of PW12/Sanjay Naik that he was told that the knife was required to be attached 4 days prior to the actual date of recovery would make the said recovery highly suspect and, therefore, has been rightly considered by the learned Sessions Judge as not proved. Nevertheless, certain notions wrongly held as regards blood stains and its relation to water and its effect need to be cleared. Blood stained articles form an important part of the prosecution evidence in large number of cases and ordinarily the Police are expected to ensure that the panchanama regarding the seizure of these articles contains a detailed description of the alleged blood stains including their number and extent, wherever possible. Likewise, it is also the duty of the Chemical Examiner to indicate the number of blood stains found by him on each exhibit and the extent of each stain unless they are too minute or numerous to be described in detail. Merely to say that blood was detected, as the report in this case indicates, would not be much revealing, considering that the knife was stated to have been wiped. It is well known that the blood on the clothes,

even if the clothes are washed, it is still possible for the laboratories to detect blood from the washed materials. Blood or the red colouring matter of it, can obviously be removed by scraping or rubbing or washing, etc. and may if on a very shiny or greasy object fall off in handling. To most surfaces blood sticks very tightly and it is exceedingly improbable, that even the roughest handling would entirely remove a stain from any object so that not even a small speck sufficient to give tests remains. Blood stains vary very much in size, shape and colour. The colour of the blood stain depends upon:

- (i) its freshness-if recent it possesses a bright red colour and it is due to haemoglobin. If old, the colour is reddish-brown or brownish and that is due to conversion of haemoglobin into methamoglobin and finally into haematin;
- (ii) upon its thickness, the thicker a stain the darker its colour and
- (iii) nature of the material upon which the blood has fallen; if the material be porous the colour is dull, if the material be hard and polished the stains have a shiny appearance probably if the stains are on a coloured substance they are best recognized by artificial light. The changes in colour are not entirely determined by age of the stain but also are influenced by the presence or not of impurities in the air, such as acid vapours, etc.

Although a conclusion could be drawn that if the colour of the blood stain be red, the stain is fairly recent but if it is brown it is no proof that it is an

old stain. Haemoglobin is a soluble substance while haematin is very insoluble in water. If an article stained with blood has not yet been washed until sufficient time has elapsed for the conversion of the haemoglobin into haematin, sufficient of the latter can in all probability remain to enable it to be detected. If an article has been well washed in cold water whilst the haemoglobin is unchanged, then no trace of it may be left; but if hot water has been employed, then, owing to its action on haemoglobin, sufficient may be left in the fabric for identification. The probability is that the detection of the stain may even be easier if the article has been washed in soap and water, owing to the alkali in the soap rapidly converting haemoglobin into haematin, and, it should be borne in mind that rust(oxide of iron) facilitates the change of blood colouring matter from soluble into insoluble form so that blood stains produced at the same time on the handle and blade of a knife or other cutting weapon, may present very different appearances).(See pages 238, 239 Fields Expert Evidence, 3rd Edition, 1988). If the victim is hit when the victim was bleeding or if the weapon is a sharp edged weapon, the weapon is likely to carry blood evidence. In certain cases(i.e. where the weapon has been withdrawn from a deep cut) most of the blood is wiped out but even then the weapon carries sufficient blood to permit identification. If the weapon has been cleaned after the

offence, some blood can still be retained in the joints, crevices and cracks of the weapon. Even if the knife, or other weapon is wiped, the blood stain may only be represented by a thin film of yellowish colour; from this sufficient blood colouring matter may be removed for recognition by the microspectroscope, by repeated washing with a small camel hair brush dipped in the mixed borax and ammonia solutions. What follows therefrom is that all traces of blood may not be removed by wiping and blood could always be found in joint, crevices, etc. and if sufficient time has lapsed for haemoglobin to turn into haematin then blood could be detected even if the weapon is found in water after considerable period of time, haematin being insoluble in water. See page 240(supra). It appears that the knife (MO.20/Exh.AA) was the only article which was sealed in the manner it should have been, namely, first by placing it in a polythene bag and heat sealing the same and thereafter inserting the said polythene bag into an envelope which was packed and sealed. The polythene bag has been found missing and in the context of other facts stated herein above, this would create a further doubt whether what was sealed in the presence of PW12/Sanjay Naik had remained without being tampered with until it was sent to C.F.S.L. The knife appears to have had a round iron handle and a pointed blade with uneven edge on either side and was in rusty condition. If

the accused had at all taken it as alleged by the prosecution from Marna, Siolim to Parsem it is quite possible that hemoglobin had turned into haematin and the rust formation had hastened such a process and in view of uneven edges of the said knife it was still possible to detect the blood even inspite of the fact that the knife was wiped to make it dry of water. However, we have already stated that this recovery of the knife is entirely suspect and, therefore, cannot be relied upon as a circumstance proved beyond reasonable doubt against the accused.

10. Then there are recoveries of gold ornaments which we will consider independently and the recovery of the mangalsutra(MO.17), first. As per the I.O., on the next date i.e. on 3-12-2002 the accused stated that he had sold the gold mangalsutra of the deceased to one goldsmith at Pernem and the accused had volunteered to show the said shop as well as the goldsmith who had purchased the said mangalsutra. PW10/Vishant Mandrekar who was examined by the prosecution, as one of the panch witness for the recovery of the said mangalsutra, stated that the accused had told them that he would show the place where he had sold the mangalsutra and thereafter the accused had shown the way and accordingly they had gone to Pernem and upon reaching there the accused told the

driver to stop and they went to the shop of Laxmi Jeweller where there was one person behind the counter and the accused stated that he had given the mangalsutra to the said person whereupon P.I. Wilson D' Souza asked the said person who gave his name as Siddharth Karekar and the said Siddharth had stated that the accused had given the mangalsutra and had requested for money and he had told the accused that he does not purchase gold but prepares only gold ornaments and that upon weighing the said mangalsutra it was found to weigh 27.9 gms. and the accused went away with the said mangalsutra and came back and stated that he had arranged for money to take the mangalsutra and to make one chain and one bracelet out of it and that the said Siddharth had told them that he had broken the beads and without the beads it weighed 24.4 gms. and that the said Siddharth also told them that he had written the details in his diary and the page of the said diary was attached by the P.I. He also stated that thereafter the mangalsutra was packed in a plastic bag and it was sealed and thereafter the P.I. took the beads, two of which were of red colour, and others were of black colour and these beads were put in a plastic bag and thereafter the plastic bag of mangalsutra was put in the bag of beads and thereafter this plastic bag was also sealed after putting inside a slip with their signature and thereafter a writing was taken from the said Siddharth that he had

handed over the mangalsutra and the beads to the Police and their signatures were taken on the back of the said writing. PW3/Siddarth stated that he knew the accused for about 2 years as the accused used to visit his shop and ask for rate of gold and that the accused had told him, one month prior to 3-12-2002, that his cousin sister had lost her husband and that he wanted to convert her gold mangalsutra into a gold chain and he had told the accused to bring the mangalsutra but for a month the accused did not bring the same though he was coming to the shop and he had thought that the accused was fooling him but on 28-11-2002 at about 4 p.m. the accused came to his shop with one mangalsutra and stated that it belonged to his cousin sister and she was in need of money and requested him to purchase the same and he told the accused that he does not purchase such articles and when he weighed the same he found it to be 27.9 gms. with beads and the accused took it away saying that he would try to dispose it elsewhere and on the same day at about 5.30 p.m. the accused came back to his shop and told him that he had arranged for money and that he should take the said mangalsutra and convert it into gold chain and bracelet and he took the mangalsutra, broke the beads and he told the accused that 2.9 gms. would be deducted for remaking of the ornaments and the accused told him to prepare a chain of 12 gms. of the length of 22 inches and a bracelet of 10

gms. of a length of 8 inches and he wrote on his diary the said weight and other facts and told the accused that the order would be ready after 4 days and the accused went away, and, on 3-12-2002 Police brought the accused to his shop and inquired with him about the mangalsutra which was handed over by the accused to him and he showed the said mangalsutra to the Police and the Police weighed the same and drew the panchanama and the weight was found to be 24.4 gms. and the weight of broken beads was 3.5 gms. and the Police attached the said mangalsutra and the beads were put in a plastic packet and sealed and he had issued the receipt indicating the weight of the mangalsutra and the broken beads. He identified the said receipt(Exh.13) and the page of his diary(Exh.14). In cross-examination, he stated that the signature of the accused was obtained on the page of the diary(Exh.14) and the said page of the diary was packed in the same plastic envelope in which gold mangalsutra and broken beads were kept. PW10/Vishant was not re-examined with reference to the packing of the said page of the diary in the same plastic bag in which gold mangalsutra and the broken beads were kept. It has been submitted on behalf of the accused that the said page of the diary-Exh.14 was given to the accused when the charge-sheet was filed and the fact stated by PW10/Vishant that the said page of the diary was packed in the plastic envelope shows that the

packing and sealing of the said mangalsutra was tampered with. The learned Sessions Judge has relied on the panchanama-Exh.29 to save the situation by stating that it was recorded in the panchanama that the said page of the diary was separately attached. However, such a course was not open to the learned Sessions Judge. The evidence of PW10/Vishant could be used only to corroborate the contents of the panchanama and if PW10/Vishant had stated something contrary to the said panchanama then it was the duty of the prosecution to have solicited an explanation from him to reconcile the same with the panchanama by way of re-examination. It was also argued before the learned Sessions Judge and now before this Court that the Investigating Officer knew that on 2-12-2002 when panchanama of recovery of gold bangles-Exh.27 was recorded, the Investigating Officer knew that the bangles/patlis and mangalsutra were sold to a jeweller at Pernem and, therefore, there was no question of delaying the recovery of the same. Indeed, PW9/Pradip who was examined to support the panchanama-Exh.27 of recovery of bangles on 2-12-2002 had stated that on 2-12-2002 the accused had made a statement that he had snatched the patlis and mangalsutra from the deceased and sold the same to one jeweller. Moreover, there has been no explanation from the Investigating Officer as to why the recovery of the mangalsutra was not

done on 2-12-2002 when the accused informed him that he had also sold the mangalsutra to a jeweller at Pernem and why on that day the Investigating Officer chose to go only to the shop of PW2/Suresh and did not go in search of another jeweller, if there was one to whom the mangalsutra was sold. If the accused had stated that he had sold the ornaments(patlis and mangalsutra) to one jeweller one does not know as to why the I.O. did not question PW2/Suresh Vernekar about the mangalsutra. The learned Sessions Judge was aware that the panchanama dated 2-12-2002-Exh.27 indicated that the accused had stated that the gold ornaments were sold to one goldsmith at Pernem. However, to overcome the situation the learned Sessions Judge observed that that being the case it was not necessary to record any disclosure statement on 3-12-2002 and that apart, the evidence of PW10/Vishant and PW22/Wilson D'Souza indicated that the jewellery shop and the goldsmith to whom the gold mangalsutra was given was shown only on 3-12-2002 and that this recovery had to be considered on the basis of the disclosure statement made on 2-12-2002. We are unable to accept this course of reasoning. If the Investigating Officer wanted the Court to believe that the said recovery of the mangalsutra (MO.17) without beads and the pieces of beads packed separately was done pursuant to the information given by the accused on 2-12-2002, he was

expected to say so before this Court and the fact that he had the information on 2-12-2002 on which date the recovery could have been made but was not made but instead was made on 3-12-2002 would make the evidence of the said recovery suspicious and this in the background of the fact that the accused had stated that the ornaments were sold to one jeweller and not two. Even if we are persuaded to accept the evidence of the Investigating Officer coupled with the evidence of PW10/Vishant and PW3/Siddarth, as regards the recovery of mangalsutra, which otherwise we are not, in our view, the said mangalsutra has not been sufficiently identified as belonging to the deceased. PW1/Sweta, the daughter of the deceased was shown in Court the said mangalsutra(MO.17), without the beads, and she stated that the mangalsutra worn by her mother, was similar to it and had black beads. In other words, she did not identify the said gold chain of mangalsutra without beads as that of her mother. Obviously, she could not identify because she had never seen her mother wearing only the chain without beads. The identification by PW4/Anant, the husband of the deceased and PW5/Hemant, the son of the deceased has not been different and they too were shown the said bare chain of mangalsutra without beads and they stated that it was similar but it was having black beads. As seen from the evidence of PW10/Vishant, it appears that there were two beads of

red colour to the mangalsutra which was seized from the shop of PW3/Siddarth but both the children nor the husband of the deceased have referred to the said red beads. The prosecution also did not make any effort to get the said mangalsutra identified, with reference to the mangalsutra as seen from the photograph of the deceased on missing report Exh.81. If that was done then to some extent it could have been said that the said children/husband of the deceased had identified the mangalsutra of the deceased. It is certainly not the case of the said children/husband that they were accustomed to see the bare chain without beads. Mangalsutra is a common ornament worn by all hindu ladies and the mangalsutra-MO.17 as such has not been identified by any of the said children/husband of the deceased. All that they have stated was that the bare chain shown to them was similar to the mangalsutra with black beads which the deceased was wearing. The statement of PW10/Vishant that on 5-12-2002 PW1/Sweta, PW4/Anant and PW5/Hemant had identified the mangalsutra as belonging to the deceased has got to be considered as exaggeration. In a serious crime of this nature, such identification of a common article of day to day use that it was similar and not the same as that of the deceased cannot be accepted to prove as a circumstance against the accused. The learned Sessions Judge referred to the case of **Earabhadrapa v. State of**

Karnataka(AIR 1983 SC 446) wherein the Supreme Court had stated that there was no legal requirement that a prior test identification parade of seized articles should be held. That was a case where the gold ornaments and the sarees belonging to the deceased were identified by the mother-in-law, the husband and the son of the deceased who all had stated that the said ornaments belonged to the deceased. There were also 6 silk sarees which were expensive and of distinctive design and in that context that the Apex Court observed that ladies have an uncanny sense of identifying their own belongings, particularly articles of personal use in the family and proceeded to rely upon the evidence of the said witnesses as regards the identity of the seized articles. In the case of **Hardyal and Prem v. State of Rajasthan**(AIR 1991 SC 269) the Supreme Court was considering the aspect of recovery of certain ornaments from the houses of the accused on various dates and the Supreme Court rejected the identification of the said articles for five reasons, two of which would be relevant for our purpose: First, in Exh.P-1, there was absolutely no description of the ornaments of the deceased which she has said to have been wearing on the date of occurrence. Secondly, the ornaments were of common pattern usually worn by the ladies in Rajasthan. Suffice it to observe that what has been identified by the family members of the deceased in this case is not the

mangalsutra which they used to see the deceased wearing but a bare chain without beads which in their opinion was similar to the mangalsutra which the deceased used to wear with beads and as already stated this is a poor identification of the said bare chain as the mangalsutra worn by the deceased. In our view, this circumstance could not have been held to have been proved against the accused for want of proper identification.

11. That takes us to the sixth and last circumstance of recovery of the bangles/patlis(MO.16) at the instance of the accused. The evidence on this aspect appears to be reasonably reliable at first flush. As per the I.O. the accused on 2-12-2002 made a disclosure statement in the presence of PW9/Pradip and Dattaram Tulaskar stating that he had sold the gold mangalsutra and the bangles/patlis to a goldsmith at Pernem and volunteered to show the said shop. PW9/Pradip has been examined in support of the panchanama of the recovery of the said bangles/patlis-Exh.27 and he too has stated that the accused had made a disclosure statement that the accused had snatched the gold bangles of Aneya and sold them to one jeweller at Pernem and volunteered to show the said shop of the said goldsmith and upon the said information they had gone to Pernem market and the accused had pointed out to one person sitting in the said

jewellery shop as the person to whom he had sold the gold bangles and gave his name as Suresh and who had stated that the accused had sold to him the gold bangles for Rs.8000/- and the said Suresh handed over the said two gold bangles weighing 24 gms. and also issued a receipt on his letter head indicating that he had handed over to the I.O. the gold bangles weighing 24 gms. We are unable to understand as to why such a receipt was ever obtained by the I.O. from PW2/Suresh. PW2/Suresh stated that he knew the accused who two to four months prior to the incident had come to the shop to see gold ornaments but had not purchased any but on 28-11-2002 at about 4 to 4.30 p.m. the accused came to his shop and told him that his mother was sick and needed money for her treatment and wanted to sell gold bangles but he told the accused that he does not purchase gold but upon persistent requests of the accused to purchase the same he weighed the gold bangles and found to be 24 gms. and he quoted Rs.8000/- but the accused stated that he should pay him at least Rs.10,000/- but he declined to pay more than Rs.8000/- and thereafter the accused phoned someone and again he told the accused that he would not pay him more than Rs.8000/- and the accused agreed to keep the gold bangles with him stating that he would later repay him the amount of Rs.8000/- and take back the gold bangles, and on 2-12-2002 the

Investigating Officer along with the accused and other several members came and questioned him whether the accused had kept any gold with him and seeing the accused he remembered and handed over the gold bangles to the I.O. and on that occasion he also issued a receipt-Exh.11 specifying the weight of the gold bangles. He identified the said gold bangles(MO.16) as the same bangles which were kept by the accused with him. In cross-examination, he stated that he had not made any entry in his books for having received the gold bangles from the accused because the accused had only kept the gold bangles with him and promised to take them back after paying the amount of Rs.8000/-. The learned Sessions Judge has come to the conclusion that the evidence of PW2/ Suresh corroborates the entire version given by the I.O./PW22 and panch witness PW9/Pradip in all material particulars. In fact, it does not. The version of the I.O. and PW9/Pradip was that the accused had stated before them that he had sold the said gold ornaments to one jeweller and PW2/Suresh has stated that the said gold ornaments were not sold to him but he had advanced Rs.8000/- to the accused because the accused would pay the amount later on and take back the gold bangles. PW2/Suresh has not even stated as to when the accused was supposed to return his money and take back the said gold bangles. According to him, the said gold bangles were thick and flat with zig

zag design with balls on the sides, and, in cross-examination he stated that he did not give to the Police the description of the said gold bangles since all the patlis have the same design. He also stated that he had not made any entry of the gold bangles(MO.16) in any of his books, having received the same from the accused. At the same time, he stated that the accused had not pawned the said gold bangles but the accused had merely stated that he would take back the gold bangles by later on making the payment. He was confronted with his previous statement to the Police wherein he had stated that he had purchased the said two gold bangles from the accused. It is but obvious that PW2/Suresh if at all he purchased the said two gold bangles from the accused was only trying to save his skin from being prosecuted as a receiver of the said gold bangles. The evidence of PW2/Suresh keeps many unexplained blanks. It becomes difficult to accept that the accused had gone to his shop on 28-11-2002 at about 4 p.m. to 4-30 p.m. for it has been stated by PW17/Sharmila Alornekar that at about 4 o'clock the accused dropped her at her residence on 28-11-2002 after she met the accused in Pernem market and dropped her at her residence at Warkand and that it takes about 20 minutes to reach her house on motorcycle from Pernem. The conduct of the accused at the shop of PW2/Suresh does not appear to be of a person who had gone to sell gold ornaments, not of his own and involved

in crime. In fact no plausible explanation has been given on behalf of the prosecution that in case the accused was himself involved in the murder and robbery of the said gold ornaments from the person of the deceased, the accused should have phoned twice from the very shop of PW2/Suresh as to whether he should sell at a price of Rs.8000/- quoted by PW2/Suresh. In case PW2/Suresh had kept the said bangles with the hope that the accused would take them back by paying the amount of Rs.8000/-, PW2/Suresh has not stated as to when the accused had promised to come back with the money and take back the said gold ornaments. The evidence of PW2/Suresh that he had either purchased or kept the said two bangles against money given to the accused was not free from doubt and, therefore, could not be accepted. Assuming that the said gold bangles were recovered on the basis of what has been stated by the I.O. and PW9/Pradip from the shop of PW2/Suresh, the said recovery also does not remain free from doubt. Firstly, the Investigating Officer knew on 1-12-2002 on the basis of the statement given by the accused to PW16/Dr. S. Sapeco which statement has otherwise been rightly rejected by the learned Sessions Judge as inadmissible, that the gold ornaments were sold to Mr. Verenkar and there has been no explanation from the Investigating Officer as to why he could not recover the said gold ornaments on that very day i.e. on 1-12-2002 and

had to wait till 1-30 on 2-12-2002 to recover the same and that too after calling a person from the village of the deceased who was earlier present at the police station. That is one aspect.

12. Second aspect is as regards identification. We have already observed that the missing report has been kept away from the Court. The first information report given by PW1/Sweta if at all it could be called as such, states that the deceased was wearing a mangalsutra with black beads, two gold bangles/patlis, gold earrings with flower design having white colour stone and chain, gold finger ring and gold nose pin. There is no whisper from the I.O. as to what happened to gold earrings, finger ring and nose ring, in the background of the fact that even the toe ring worn by the deceased was found. The F.I.R. and the evidence of PW1/Sweta shows that she had given description of some of the ornaments worn by her mother but she gave no description of the gold bangles/patlis worn by the deceased and the evidence of PW2/Suresh Vernekar shows that they were capable of being described very easily, as they were thick, fat with zig zag design and balls on the sides. We are unable to understand as to why the deceased had to wear the said gold bangles on that day, since it is common knowledge that patlis are worn by hindu ladies on festive occasions, and the deceased

was going to meet the accused, on being called by him and not for any festive occasion.

13. There is no doubt that PW1/Sweta has identified in Court the said bangles/patlis as belonging to her mother. She did not refer to the fact that the said bangles were shown to her earlier in the presence of PW10/Vishant Mandrekar on 5-12-2002 and although PW1/Sweta had stated earlier that her mother had taken the telephone bill when she left the house the said telephone bill was not found in the shoulder bag(Exh.7) of the deceased and in fact PW1/Sweta who was about 16 years of age at the time of the incident was not even able to depose as to what had happened to the said telephone bill whether it was paid or not. PW1/Sweta admitted in cross-examination that she had not given any description of the said bangles worn by her mother and that she had merely described them as patlis. We fail to understand as to how PW1/Sweta could not give description which could be easily given of the patlis when she had given of other ornaments worn by the deceased. PW2/Suresh has stated that all patlis have the same design as those which the accused kept with him and if that is the case the identification by PW1/Sweta of the said bangles/patlis as those of her mother could not be free from doubt. The observation of the

Supreme Court that women have an uncanny sense of identifying the articles of personal use in the family cannot be made applicable to her in the circumstances of the case. Firstly, we don't see any reason why the deceased had to wear the bangles/patlis on that day. If PW1/Sweta was familiar with the said patlis she could have easily given the description, which she gave in relation to other ornaments. As the evidence of PW2/Suresh shows, the said patlis appear to have been of common design and the same having been shown to PW1/Sweta, her brother and father, they have identified the same as belonging to the deceased. We are not impressed with such an identification, in the background of the facts of the case. In any event, we may observe that in the chain of circumstances which have been disproved, this would be the only circumstance on the basis of which the accused could not be convicted for a serious offence of murder.

14. On the other hand, as rightly pointed out on behalf of the accused, there are lot number of circumstances in the chain of circumstances sought to be proved against the accused which shows that the behaviour of the accused was consistent with his innocence rather than with his guilt. The evidence of PW14/ Tanko Padloskar, PW15/Manoj Thakur and PW20/Kiran collectively shows that the accused was not merely

a pilot namely carrying people on his motorcycle on hire but was also a mechanic and used to sell spare parts of watches. PW14/Tanko and the accused were together at about 2 p.m. on 28-11-2002 and thereafter PW14/Tanko had seen the accused at 3 p.m. at the bus stand at Pernem but did not talk to him at that time. Between 4 and 5.00 p.m. the accused took PW17/Sharmila to Warkand and at about 6.30 the accused and PW14/Tanko went to Vasco-da-Gama on the motorcycle of the accused and this was with prior arrangement made by them and PW15/Manoj on 26-11-2002. At Vasco-da-Gama they went to the house of the brother of the accused by name Lavu Rao at New Vaddem at about 7.45 p.m. and thereafter they went to the house of the sister of PW14/Tanko along with another brother of the accused by name Sanvlo Rao where all of them had dinner and while the accused and all three namely the accused, PW14/Tanko and PW15/Manoj spent the night at the house of the sister of PW14/Tanko, on the next morning, PW14/Tanko and the accused went to a watch repairer shop and found it to be closed and thereafter the accused and PW14/Tanko went to Margao where they reached at about 10.45 a.m. on 29-11-2002. There the accused told PW14/Tanko that his motorcycle was dirty and it was given for washing at the petrol pump, as otherwise stated by PW18/Sabia S. Mohammed. Thereafter, they went to see

PW15/Manoj and all three of them namely PW14/Tanko, PW15/Manoj and the accused had lunch at Margao and PW14/Tanko and the accused returned to Pernem on the motorcycle of the accused and on the way the motorcycle had a problem and had to be repaired and thereafter the accused dropped PW14/Tanko at his residence and the accused proceeded to his residence. PW14/Tanko stated that on reaching at his residence he learnt that the mother of PW1/Sweta was missing since 28-11-2002 and he phoned PW5/Hemant and told him to come to his house and that he and the accused were together on 28-11-2002 from 2 p.m. and had gone to Vasco and he also told him that his mother had not accompanied them to Vasco and he had not seen his mother along with the accused on 28-11-2002 at 6.30 p.m. The evidence of the aforesaid witnesses shows that from 2 p.m. the accused went about with his normal business and throws a shadow of doubt regarding the timings when sale of gold ornaments are alleged to have been made by the accused. The accused thereafter reported to Pernem Police Station on 30-11-2002.

15. There is no doubt that the Supreme Court in **State of Rajasthan v. Kishore**(1996 Cr.L.J. 2003) has held that mere fact that the Investigation Officer committed irregularity or illegality during course of

investigations would not and does not cast doubt on the prosecution case nor trustworthy and reliable evidence can be cast aside to record an acquittal on that account. That was a case where the I.O. did not send the burnt clothes of the deceased for chemical examination. However, in this case we are constrained to observe that there has been manipulation of investigations at every stage. The missing report lodged by PW4/Anant has not been produced before the Court. No Officer from Pernem Police Station has been examined to throw any light as to what happened there where the accused was called and where the accused was from 9 a.m. of 30-11-2002 till the accused was shown arrested by Anjuna Police Station. The recovery which could be made on 1-12-2002 was made on 2-12-2002 and the recovery which could be made on 2-12-2002 was made on 3-12-2002 and all this without any explanation. The timing during which recovery panchanama of mangalsutra Exh.29 was made was kept blank in the statement of PW3/Siddarth. When questioned on that aspect PW3/Siddarth stated that he knew that there was a blank in his police statement but did not tell the police to fill in the said blank. According to the I.O. the statement of PW3/Siddarth was recorded at about 4 p.m. after completion of panchanama. If that was so, there was no necessity for the I.O. to keep the timing blank and this shows that there has been attempt at

manipulation. We have already referred to the tampering with sealed articles. The Supreme Court in the case of **Rajendra Kumar v. State**(2003 Cr.L.J. 4344) might have ignored the aspect of not sealing of the bangles when they were recovered. That was a case where the goldsmith who had made the bangles had put a specific number on them and they were identified by 3 witnesses including the goldsmith and husband of deceased. The need to seal the blood stained articles particularly such as clothes of the accused, weapons, etc. need not be overemphasised and that is with a view to avoid tampering. A Division Bench of this Court in the case of **Ravindra Kankoncar v. State**(2000(1) GLT 133 relying on other decisions of this Court, held that when an item is recovered at the instance of accused, if not sealed properly, no value can be attached to such recovery. Tampering with one of the articles-Exh.D has been proved and therefore tampering with others could not be ruled out. The ratio of the Judgment of Supreme Court in Kishore's case(supra) is not attracted in the circumstances of this case.

16. A disturbing aspect of this case is that all the seizures and/or recoveries have been made in the presence of witnesses who were the neighbours of the deceased who were called from a distance of about 50 metres and not only that on 30-11-2002 they were at the Police Station

where the accused was also there and amongst them were PW8/Dattaram Tulaskar, PW9/Pradip, PW10/Vishant Mandrekar and PW12/Sanjay Naik. The accused has stated in his statement under Section 313 of the Code that he has been falsely implicated at the behest of the family of the deceased and their neighbours from their village Nagzar and the said persons were arguing with the Police and demanding the arrest of the accused. The Investigating Officer when questioned on this aspect, has stated that all the witnesses to the recovery panchanamas namely Exhs.24, 27, 29, 33, 36 and 38 were from Nagzar village. When asked about the reason for securing the presence of the said witnesses for panchanamas which started at Anjuna Police Station, he stated that there was no specific reason for procuring the said witnesses from the village Nagzar. When asked about the distance between Pernem market and Nagzar village, the Investigating Officer was unable to give the same. It was suggested to him that the distance between Pernem market and Nagzar village was 17 kms. and from Pernem market to Anjuna Police Station was 35 kms. and he was unable to give any answer to the said suggestion. It is on the basis of this suggestion that we presume that the witnesses were called from a distance of about 50 kms. All that we need to observe is that the Investigating Officer ought not to have called each and every witness for the panchanamas to Anjuna Police Station all the

way from Nagzar, Pernem more so because as per accused, most of them were demanding earlier that accused be arrested. PW8/Dattaram Tulaskar was examined to support the attachment panchanama of the motorcycle-Exh.24 on 3-12-2002. Although the said panchanama was done at Bhutawadi, Pernem at the house of the accused, he was called to Anjuna Police Station at about 3.30 p.m. and they had started from Anjuna at 3.30 p.m, but as per PW10/Vishant Mandrekar, the first part of the panchanama was done at Anjuna Police Station between 1.30 p.m. and 2 p.m. and second part at Pernem between 3 p.m. to 4 p.m. If they had left at 3.30 p.m. from Anjuna, they could not have been at Pernem between 3 p.m. to 4 p.m. It is obvious that one or both have made incorrect statements. Further, PW8/Dattaram was a panch witness not only to the attachment of the motorcycle from the house of the accused, but he was also a panch witness to the recovery of bangles-Exh.27, recovery of Rs.5800/- Exh.36. In cross-examination, he admitted having stood as a panch witness in 2 or 3 panchanamas but he did not remember the dates, timings and contents of the said two panchanamas. One fails to understand as to how PW8/Dattaram could remember only about the panchanama regarding which he was examined but could not remember the contents of the other

two. Obviously he was trying to hide the truth. In the circumstances, PW8/Dattaram cannot escape the label of being a tutored witness.

17. In conclusion, we may observe that the case of prosecution has no foundation. What happened at Pernem Police Station, where the accused was called, where PW1/Sweta was present and so also other neighbours of the deceased, is kept away from the Court. The investigations, to say the least, have been shoddy. Police investigation is the foundation stone on which the edifice of criminal trial rests and errors either by design or default, can end up in miscarriage of justice. The Police Officer who investigate cases owes a solemn duty to the Society that investigations are done honestly and to the best of ability and without any bias or manipulation. However, that does not appear to have happened in this case. The case was based on circumstantial evidence, the law regarding which is well settled. The circumstances must unerringly point out to the guilt of the accused and should be incompatible with his innocence. We have held that the first five circumstances, discussed hereinabove, are not proved and on the sixth circumstance also the accused deserved to be given benefit of doubt. We therefore allow the appeal and set aside the Judgment of the learned Sessions Judge and acquit the accused under Sections 302, 394

I.P.C. In fact there was no question of accused being separately convicted under Section 394 I.P.C. when it was the case of prosecution that the deceased was murdered with a view to commit robbery. Accused be set to liberty forthwith unless he is required in any other case.

A. P. LAVANDE, J.

N. A. BRITTO, J.

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